



Billing Code: 9111-52

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Parts 59 and 64**

**[Docket ID FEMA-2019-0016]**

**RIN 1660-AA92**

**Revisions to Publication Requirements for Community Eligibility Status**

**Information Under the National Flood Insurance Program**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

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**SUMMARY:** This final rule modernizes regulations regarding publication requirements of community eligibility status information under the National Flood Insurance Program (NFIP). FEMA is replacing outdated regulations that require publication of community loss of eligibility notices in the *Federal Register* with a requirement that FEMA publish this information on the internet or by another comparable method. FEMA is also replacing its requirement that the agency maintain a list of communities eligible for flood insurance in the Code of Federal Regulations with a requirement that FEMA publish this list on the internet or by another comparable method.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at <http://www.regulations.gov> and can be viewed by following that Web site's instructions.

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**SUPPLEMENTARY INFORMATION:**

I. Background and Discussion of the Rule

The National Flood Insurance Act of 1968, as amended (NFIA), Title 42 of the United States Code (U.S.C.) 4001 *et seq.*, authorizes the Administrator of FEMA to establish and carry out the National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of property arising from floods in the United States.<sup>1</sup> Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted and that enforce adequate land use and control measures that regulate floodplains.<sup>2</sup> The statute authorizes FEMA to develop land use criteria consistent with requirements laid out in the NFIA and to encourage the adoption and enforcement of State and local measures implementing those criteria.<sup>3</sup> FEMA floodplain management regulations governing community eligibility for participation in the NFIP are located at 44 CFR parts 59, 60, and 64.

FEMA regulations at 44 CFR 60.3, 60.4, and 60.5 contain land use measures for floodplain management. If a community fails to demonstrate to FEMA that it meets these requirements, or decided to withdraw from the NFIP, FEMA may initiate probation, suspension, or withdrawal procedures as described in 44 CFR 59.24. In the case of a loss

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<sup>1</sup> See 42 U.S.C. 4011(a).

<sup>2</sup> See 42 U.S.C. 4022(a)(1).

<sup>3</sup> See 42 U.S.C. 4102(c).

of eligibility, for instance if a community is suspended for failing to enforce its floodplain regulations, FEMA notifies the community of the upcoming loss directly and gives the community an opportunity to correct the deficiency that triggered the procedures. In cases of loss of eligibility, FEMA publishes a notice of the upcoming loss of eligibility in the *Federal Register* as required by 44 CFR 59.24.

NFIP regulations at 44 CFR 64.6 provide a list of communities where the sale of flood insurance under the NFIP is authorized as set forth in Subpart B, “Eligibility Requirements,” to part 59 of the regulations. Due to the large number of communities eligible for flood insurance and the relative frequency to changes to community eligibility, maintaining a list of communities in FEMA’s regulations is not feasible; however, FEMA meets this requirement by publishing the updated list of communities through periodic final rules in the *Federal Register*. FEMA last published an updated list in the *Federal Register* in August 2006.

On February 12, 2020, FEMA published a Notice of Proposed Rulemaking (NPRM) (85 FR 7902) proposing to make two changes to its regulations regarding publication requirements of community eligibility status information under the NFIP. The NPRM proposed to replace outdated regulations that require publication of community loss of eligibility notices in the *Federal Register* with a requirement that FEMA publish the information on the internet or other comparable method. The NPRM also proposed to replace the requirement that the agency maintain a list of communities eligible for flood insurance in the Code of Federal Regulations (CFR) with a requirement that FEMA publish this list on the internet or other comparable method. The NPRM explained FEMA would transition to the new form of publication by first publishing brief

notices monthly in the *Federal Register* for six months after the effective date of the final rule.

The NPRM solicited public comment on these proposed changes. FEMA received six comments related to the rulemaking. In this final rule, FEMA adopts the changes it proposed in the NPRM, with clarifications in consideration of the related comments. FEMA describes these changes below.

## II. Summary and Discussion of Public Comments

Of the six comments FEMA received related to this rulemaking, five were generally in support of the proposed changes in the NPRM and one was neutral. Three members of the public [FEMA-2019-0016-0003, FEMA-2019-1660-0007, and FEMA-2019-0016-0002] expressed their support for the rule generally. One member of the public [FEMA-2019-0016-0003] stated she was supportive of the move to an online notification process and also of the proposed transition period in the NPRM while another member of the public [FEMA-2019-1660-0007] expressed support for the changes and noted that the NRPM aligned with OMB M-19-21 regarding a transition to electronic records and other such Federal Government initiatives. A third member of the public [FEMA-2019-0016-0002] expressed general support for the changes. The Association of State Floodplain Managers (ASFPM) [FEMA-2016-0016-0006] expressed support for the changes, as did the Massachusetts Department of Conservation and Recreation [FEMA-2019-1600-0004].

### A. The Community Status Book (CSB)

Three commenters provided feedback on the use of the CSB. One anonymous commenter [FEMA-2019-0016-0005] stated a need to include communities that are not

mapped in a Special Flood Hazard Area (SFHA) and not participating in the NFIP in the CSB. The commenter opined that the absence of these communities from the list of communities not participating in the NFIP created confusion for everyday users and required them to reach out to additional resources which undermines the cost savings proposed in the rule. FEMA respectfully disagrees with the commenter. The statute requires FEMA to develop minimum floodplain management criteria to “(1) constrict the development of land which is exposed to flood damage where appropriate, (2) guide the development of proposed construction away from locations which are threatened by flood hazards, (3) assist in reducing damage caused by floods, and (4) otherwise improve the long-range land management and use of flood-prone areas.”<sup>4</sup> FEMA is required to focus NFIP floodplain management efforts on communities with flood-prone or special flood hazard areas. Consistent with the statutory requirement, the CSB provides a list of those communities participating in the NFIP and those communities not participating in the NFIP when those communities are in a currently mapped flood risk area. Some communities that do not have special flood hazard areas may still participate in the NFIP. The statutory language allows any state or area (or subdivision thereof) to participate if they have expressed an interest in participating and have adopted the required land use and control measures “consistent with the comprehensive criteria for land management and use” required by the statute and regulatory framework.<sup>5</sup> Such participation is voluntary and those communities are captured in the CSB as participating communities. It would be impractical and inappropriate for FEMA to include communities that are not

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<sup>4</sup> 42 U.S.C. 4102.

<sup>5</sup> 42 U.S.C. 4012.

in special flood hazard areas that are not participating in the NFIP program in the CSB. Including those communities in the CSB would not be consistent with its purpose – to provide the status of those communities participating in the NFIP. ASFPM [FEMA-2019-0016-0006] requested that FEMA develop a second tool to compare to the CSB to determine which communities are eligible, providing a mechanism for users to find communities not otherwise found in the CSB. As explained above, if a community is eligible and participating, the community is listed as a participating community in the CSB. If the community is suspended from participating in the NFIP, that community is also listed in the CSB as a community not participating in the NFIP along with other communities that contain identified flood hazard areas that have either withdrawn from or have not yet participated in the NFIP. The NFIP is a voluntary program. FEMA would not have knowledge of those communities that do not contain special flood hazard areas and would otherwise be eligible for the program, which requires that they have land use authority, unless those communities apply for the NFIP. Finally, a member of the public [FEMA-2019-0016-0002] suggested that FEMA make the CSB easy to search and access if the rule is to be finalized. FEMA appreciates the comment and will add instructions to the main CSB page on [www.fema.gov](http://www.fema.gov) on how to search the CSB.

#### B. Outreach

ASFPM also requested that FEMA develop and implement an outreach plan to message changes to the publication process and improve awareness of the CSB. The commenter recommended FEMA coordinate with state and local partners on this outreach effort, to update printed and online materials regarding process, and to provide accommodations for those that cannot access information online. As explained in the NPRM, FEMA will continue to publish notices in the *Federal Register* for six months

after the effective date of this rule to notify communities of their NFIP status to allow communities to adjust to the changed process as part of the ongoing outreach efforts. The notices will contain information on how to access community status information so that the public will become familiar with the new process. Additionally, FEMA will utilize *www.fema.gov* to provide notifications to communities of their status with information on how individuals can check their community status during and after the transition period. In the required notification letters FEMA sends to impacted communities notifying them of potential suspensions 90 days and 30 days prior to final suspension, FEMA will provide information on how the notification process will transition to the CSB and *www.fema.gov* respectively. The agency will also ensure outreach to notify other stakeholders of these changes through webinars, printed materials, and other information posted on *www.fema.gov* for flood insurance agents and the public. Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP Coordinating Office directly for assistance.

Additionally, the Massachusetts Department of Conservation and Recreation [FEMA-2019-1600-0004] commented that FEMA must continue to notify state NFIP coordinating offices in a timely manner of communities which have become ineligible to participate in the program. FEMA intends to continue the current practice of notifying state coordinators of community suspensions and this final rule will not impact that practice.

#### C. Other Methods of Notice

One member of the public [FEMA-2019-1660-0003] suggested broadcasting community status information through TV commercials, social media, and/or billboards in the impacted community to raise awareness. FEMA appreciates the commenter's

desire to ensure stakeholders are notified of community status changes and the agency's goal is to ensure the public continues to have the most current community status information available. Some of the suggestions would result in additional costs and would not necessarily result in sufficient or immediate access to the information that the final rule changes provide. Additionally, the commenter's suggestion to utilize social media strategies to educate the public on the new process and of suspensions, such as using Twitter and other social media platforms is not an appropriate use of FEMA's social media tools. Notices of NFIP community status are routine and not suited to social media platforms that are more focused on communicating materials regarding the Agency's mission, including disaster preparedness, mitigation, and response and recovery to stakeholders. FEMA will provide this notice to the public by publishing links to [www.fema.gov](http://www.fema.gov) information on community suspensions as proposed.

Finally, another member of the public [FEMA-2019-1660-0007] recommended a major revision to the agency's website. The comment noted that the current [www.fema.gov](http://www.fema.gov) had far too many topics in the navigation bar, which were not in any logical order and were overwhelming to the user. The commenter requested a more user-friendly experience when using FEMA's website and more search function versatility. FEMA appreciates the comment. FEMA recently completed updates to its website pursuant to the passage of the 21<sup>st</sup> Century Integrated Digital Experience Act.<sup>6</sup> The revamped website provides more user functionality, including a section of the website dedicated to floodplain management.

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<sup>6</sup> 21<sup>st</sup> Century Integrated Digital Experience Act (21<sup>st</sup> Century IDEA), Pub. L. No. 115-336, 132 Stat. 5025 (2018).



### III. Summary of Changes

The final rule removes the requirements contained in 44 CFR 59.24(a), (c), (d), and (e) that community loss of eligibility notices be published in the *Federal Register* and adds a requirement that FEMA publish the notices on the internet or by another comparable method. FEMA will store these notices on its website for a minimum of one year after the notices are issued, so that they are easily available to all interested parties. These notices will be available in the CSB area of the website and the CSB will also be updated regularly to reflect current community status information. The standard URL link for the CSB is <https://www.fema.gov/national-flood-insurance-program-community-status>. After removal from FEMA's public-facing website, the agency will retain copies of the notices in accordance with all statutory and regulatory requirements. Note that changes to the community's status will be reflected in the updated CSB so that individuals can always find the current status of their community.

Second, 44 CFR 64.6 is revised to remove the requirement that FEMA maintain a list of communities eligible for flood insurance under the NFIA in the CFR. Instead, the final rule requires publication and maintenance of the list on the internet or through another comparable method. As explained in the NPRM, FEMA will continue to maintain an online CSB, providing a list of communities that are, and are not, eligible for flood insurance under the NFIP. These changes do not impact the other notification requirements found at 44 CFR 59.24. To aid in the transition to the new form of publication, FEMA will publish brief notices monthly in the *Federal Register* for six months, after the effective date of this rule, alerting stakeholders to the change, and letting them know where to go to access community status information. The agency will

also complete various outreach activities, including notifications to impacted communities as part of the 90-day and 30-day letters they receive during the suspension process, updated process information to state and local partners, and webinars and other materials for flood insurance agents and the public.

#### IV. Regulatory Analysis

##### A. Executive Orders 12866, “Regulatory Planning and Review”, 13563, “Improving Regulation and Regulatory Review”, and 13771, “Reducing Regulation and Controlling Regulatory Costs”

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB’s

Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

#### 1. Need for Regulatory Action

Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted adequate land use and control measures.<sup>7</sup> Pursuant to this statutory direction, FEMA has adopted regulations governing community eligibility for participation in the NFIP at 44 CFR parts 59, 60, and 64. These regulations include requirements that a community follow certain steps to retain eligibility for the NFIP. If a community fails to follow these requirements or decides to withdraw from the NFIP, FEMA initiates loss of eligibility procedures as described in 44 CFR 59.24 and publishes a notice of the upcoming loss of eligibility in the *Federal Register*. In addition, 44 CFR 64.6 states that flood insurance under the NFIP is authorized for communities set forth under Section 64.6 of the regulations, requiring FEMA to maintain a list of eligible communities in the CFR.

FEMA is making two changes to the current regulations.

First, FEMA will remove the requirement pursuant to § 59.24(a), (c), (d), and (e) to publish community loss of eligibility notices in the *Federal Register*. In lieu of publication in the *Federal Register*, the rule requires that these notices be published on the internet or by another comparable method. To aid in the transition, FEMA will

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<sup>7</sup> See 42 U.S.C. 4022(a)(1).

publish brief notices in the *Federal Register* for 6 months after the effective date of the final rule, alerting stakeholders to the change.

Second, FEMA is removing the requirement pursuant to § 64.6 that FEMA maintain a list of eligible communities in the CFR. In lieu of this requirement, the final rule will require FEMA to publish and maintain a list of eligible communities on the internet or through another comparable method.

These two changes will result in reduced FEMA expenditures, largely by reducing costs associated with *Federal Register* publication. The changes to § 59.24 will also provide faster and more user-friendly access to community loss of eligibility information by requiring publication of the notices online instead of in the *Federal Register*. In addition, these changes direct FEMA to consolidate community status information into one location, allowing stakeholders to have more streamlined access to community status-related information.

## 2. Baseline

### Requirement to Publish Community Loss of Eligibility Notices in the *Federal Register*

Community loss of eligibility notices were published a total of 246 times in the *Federal Register* from 2010 to 2019. Based on data from these notices, FEMA calculates that on average, from 2007 to 2016, the notices were published about 25 times per year, rounded to the nearest whole number ( $246 \div 10 = 24.6$ . 24.6 rounded to the nearest whole number = 25).

### Requirement to Publish the List of Eligible Communities in the CFR

With respect to the requirement for FEMA to maintain a list of eligible communities in the CFR, FEMA notes that it currently maintains this list online in the

Community Status Book rather than in the CFR.<sup>8</sup> In addition, FEMA prepares quarterly reports in an attempt to comply with the publication requirement contained in §64.6. The quarterly preparation burden is approximately 15 hours per quarter at a cost of \$80 per hour, for a total of \$4,800 each year (15 hours per quarter x \$80 per hour x 4 quarters a year).<sup>9</sup> FEMA has not published the quarterly reports in the CFR since 2006 due to the recurring costs involved, and the ability to maintain a more up-to-date list, since the CFR is only updated annually.

### 3. Costs

#### Community Loss of Eligibility Notices: Internet Publication Costs

As a substitute for publishing the required community loss of eligibility notices in the *Federal Register*, this final rule requires FEMA to publish community loss of eligibility notices online. FEMA currently maintains a public website ([www.fema.gov](http://www.fema.gov)) where similar notices, bulletins, and updates from across the agency are published for public consumption. While there is no direct cost to adding individual webpages or sections to the site, publishing community loss of eligibility notices online creates labor costs for staff that need to develop a template to format and process the notices for web publication.

FEMA recently completed a website re-design that included more versatile search functionality for the user, a more standardized look and feel, increased search engine optimization, and better capture of meta-data. FEMA anticipated the use of this re-design

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<sup>8</sup> The Community Status Book is available for public viewing at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

<sup>9</sup> Hourly rates derived from FEMA estimates based on prior contracting benchmarks for this service.

in the analysis of this final rule. Development of this publication process for online notices will be labor intensive at the beginning. Once a template is created, each update will be less labor intensive than the current practice.

FEMA staff expect it will take approximately 3 days of labor (24 hours) of a General Schedule (GS) Federal employee in the National Capital Region, at the GS-14 Step 5 level (\$63.64 hourly wage),<sup>10</sup> to establish the publication process under the redesign. After the publication process is established, FEMA anticipates that it will take a GS-14 employee approximately thirty minutes per future publication.

The average 25 notices per year result in a burden to FEMA of \$3,392 the first year ( $(\$63.64 \text{ for GS 14 Step 5 wage} \times 1.46)^{11} \times (24 \text{ hours of work} + (0.5 \text{ hour of work} \times 25 \text{ notices per year}))$ ) and \$1,162 each subsequent year ( $(\$63.64 \text{ for GS 14 Step 5 wage} \times 1.46) \times (0.5 \text{ hour of work} \times 25 \text{ notices per year})$ ) for a 10-year total of \$13,850.

**Table 1: Internet Publication Costs**

Year	Initial Internet Publication Burden (Hours) (a)	Recurrent Internet Publication Burden (Hours) (b) = (0.25 x 25)	Internet Publication Cost (c) = (a x b) x (\$63.64 x 1.46)
1	24	12.5	\$3,392
2		12.5	\$1,162
3		12.5	\$1,162
4		12.5	\$1,162
5		12.5	\$1,162
6		12.5	\$1,162
7		12.5	\$1,162
8		12.5	\$1,162
9		12.5	\$1,162

<sup>10</sup> Office of Personnel Management, 2019, Washington-Baltimore-Arlington-DC-MD-VA-WV-PA, Hourly Rate, GS-14, Step 5. Available at [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf).

<sup>11</sup> Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. "Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, March 2019." Available at [http://www.bls.gov/news.release/archives/ecec\\_06182019.pdf](http://www.bls.gov/news.release/archives/ecec_06182019.pdf). Accessed June 24, 2020. The wage multiplier is calculated by dividing total compensation for all workers of \$36.77 by wages and salaries for all workers of \$25.22 per hour yielding a benefits multiplier of approximately 1.46

10		12.5	\$1,162
Total	24	12.5	\$13,850

#### Community Loss of Eligibility Notices: Transition/ Phase-out Costs

Upon publication of this final rule, FEMA will aid in the transition from the publication of community loss of eligibility notices in the *Federal Register* to their posting on FEMA’s website by publication of transitional announcements in the *Federal Register*. These announcements will alert stakeholders of the new location of these notices and they would be concise and tailored to notify stakeholders of the FEMA web address where the community loss of eligibility notices can be found. FEMA expects these transitional announcements to publish once a month for a 6-month phase-out period following the effective date of the rule.

#### Community Status Report: Cost Savings

FEMA is removing the requirement pursuant to § 64.6 that FEMA maintain an updated list of eligible communities in the CFR. FEMA does not currently publish updates to the list of communities eligible for flood insurance in the CFR and already maintains an online Community Status Book containing this information.<sup>12</sup> FEMA prepares quarterly reports on the current lists of communities in order to comply with the regulation. These reports are available upon stakeholder request, although they are not published. Modifying the regulations to eliminate the requirement to publish the list in the CFR in favor of publishing the notices in the same location as the community status list that is already maintained on FEMA’s website (the Community Status Book)

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<sup>12</sup> The Community Status Book is available for public viewing at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

eliminates the preparation of these lists and saves the quarterly preparation burden of approximately 15 hours per quarter at \$80 per hour,<sup>13</sup> yielding a cost savings of \$4,800 (\$80 per hour x 15 hours per quarter x 4 quarters a year) annually. This revision will save FEMA costs without affecting policyholders or other stakeholders.

**Table 2: Net Cost Savings**

Year	Internet Publication Cost	Community Status Report Cost Savings	Net Cost Savings	NPV at 3%	NPV at 7%
1	\$3,392	-\$4,800	-\$1,408	-\$1,367	-\$1,315
2	\$1,162	-\$4,800	-\$3,638	-\$3,429	-\$3,178
3	\$1,162	-\$4,800	-\$3,638	-\$3,329	-\$2,970
4	\$1,162	-\$4,800	-\$3,638	-\$3,232	-\$2,775
5	\$1,162	-\$4,800	-\$3,638	-\$3,138	-\$2,594
6	\$1,162	-\$4,800	-\$3,638	-\$3,047	-\$2,424
7	\$1,162	-\$4,800	-\$3,638	-\$2,958	-\$2,266
8	\$1,162	-\$4,800	-\$3,638	-\$2,872	-\$2,117
9	\$1,162	-\$4,800	-\$3,638	-\$2,788	-\$1,979
10	\$1,162	-\$4,800	-\$3,638	-\$2,707	-\$1,849
Total	\$13,850	-\$48,000	-\$34,150	-\$28,868	-\$23,468
Annualized				-\$3,384	-\$3,341

The net cost savings expected from this rulemaking are presented in Table 2. The up-front transition costs are only expected to take place in Year 1, thus the cost savings expected over the subsequent years are not impacted. For the 10-year period analyzed, the estimated quantified discounted total cost savings at 7 and 3 percent are \$23,468 (annualized at \$3,341) and \$28,868 (annualized at \$3,384), respectively.

#### 4. Benefits

Revising 59.24 to eliminate the *Federal Register* publication requirements allows FEMA to be more agile and timely in updating community status information. In contrast, continued updates through the *Federal Register* would be slower, more

<sup>13</sup> Hourly rates derived from FEMA estimates based on prior contracting benchmarks for this service.



expensive to FEMA, and present the information in a format that is less accessible to stakeholders.

In addition, making this change to 59.24, and updating FEMA's regulations in § 64.6, will locate all information related to community status and eligibility for flood insurance in one place that is well-known by stakeholders. This consolidation would improve the ease and efficiency of locating community status and eligibility information for stakeholders and for FEMA.

## 5. Transfers

Transfer payments are monetary payments from one group to another that do not affect total resources available to society. There are no anticipated transfer payments resulting from this final rule.

## 6. Alternatives Considered

FEMA considered continuing with their current method to publish the community loss of eligibility notices in the *Federal Register*. This would have taken more time to publish changes and updates. However, stakeholders would know where to access the information since the location of information would not change.

FEMA also considered the suggestion of one of the commenters about broadcasting the community status information through TV commercials, social media, or billboards in the impacted community to raise awareness. Some of these suggestions would result in additional costs and would not necessarily result in sufficient or immediate access to the information that the final rule changes provide. . Additionally, notices of NFIP community status are routine and not suited to social media platforms

that are more focused on communicating materials regarding the Agency’s mission, including disaster preparedness, mitigation, and response and recovery to stakeholders.

## 7. Summary

Table 3 provides the A-4 accounting summary.

**Table 3. A-4 Accounting Statement (2019\$)**

<b>Category</b>	<b>7 Percent Discount Rate</b>	<b>3 Percent Discount Rate</b>	<b>Source Citation (RIA, preamble, etc.)</b>
<b>Benefits</b>			
Annualized Monetized	\$0	\$0	
Annualized Quantified	N/A	N/A	
Qualitative	<ul style="list-style-type: none"> <li>Allows FEMA to be more agile and timely in updating community status information</li> <li>Improve the ease and efficiency of locating community status and eligibility information</li> </ul>		RIA
<b>Costs</b>			
Annualized Monetized	-\$3,341	-\$3,384	RIA
Annualized quantified	N/A	N/A	
Qualitative	N/A		
<b>Transfers</b>			
Annualized Monetized \$millions/year	N/A	N/A	
From/To	N/A		
<b>Effects</b>			
State, Local, and/or Tribal Government	None		
Small business	None		
Wages	None		
Growth	None		

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires

Federal agencies to consider the potential impact of regulations on small entities. The

term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not directly impact any small entities. This rule only changes how FEMA shares loss of community eligibility notices and community status information.

FEMA used the U.S. Census Bureau’s 2017 Census of Government<sup>14</sup> to estimate the number of small government jurisdictions in the United States. According to the U.S. Census, there are 38,779 jurisdictions consisting of counties, municipalities, and townships within the United States. Among these, 35,748 would qualify as small government jurisdictions, which would equate to 92.2 percent of all U.S. governmental jurisdictions. Applying this percentage to the 22,490 communities currently participating in the National Flood Insurance Program (NFIP)<sup>15</sup> results in an estimated 20,736 small governmental jurisdictions. Individual policyholders are not considered small entities.

FEMA believes this rule would not impose any direct costs on small entities and would allow easier access to information about flood insurance eligibility. Accordingly, FEMA certifies that this rule will not have a significant economic impact on a substantial number of small entities. FEMA requested comments as to the impact that the NPRM would have on small governmental jurisdictions; no comments were received.

## 1. Unfunded Mandates Reform Act of 1995

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<sup>14</sup> See U.S. Census Bureau, “2017 Census of Governments, Local Governments by Type and State 2017,” Table 2, April 25, 2019, available at: [https://www2.census.gov/programs-surveys/gus/tables/2017/cog2017\\_cg1700org02.zip?#](https://www2.census.gov/programs-surveys/gus/tables/2017/cog2017_cg1700org02.zip?#). Accessed June 25, 2020.

<sup>15</sup> The number of NFIP communities is derived from “The National Flood Insurance Program Community Status Book,” Page 478, located at <https://www.fema.gov/flood-insurance/work-with-nfip/community-status-book>.

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501-1504, 1531-1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

## 2. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501-3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507. FEMA collects community information for the purposes of application to the NFIP under OMB Control Number 1660-0004, Application for Participation in the National Flood Insurance Program

(NFIP).<sup>16</sup> However, FEMA has determined that this rulemaking does not impact this information collection or any other collection of information under the PRA.

### 3. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A “record” is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. *See id.* section 552a(a)(5). An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any

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<sup>16</sup> See 44 CFR 59.22 for a description of the information collected.

information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis (PTA) for this rule. DHS determined that this rulemaking is not privacy sensitive, as it does not affect the information collected about an individual. FEMA's original collection and maintenance of NFIP related personally identifiable information has coverage under the DHS/FEMA-003-National Flood Insurance Program Files, 79 FR 28747 (May 19, 2014) System of Records Notice and the DHS/FEMA/PIA – 011 National Flood Insurance Program Information Technology System Privacy Impact Assessment. Therefore, this rulemaking does not require coverage under an existing or new Privacy Impact Assessment or System of Records Notice.

4. Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments"

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249, (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal government, or the agency consults with Tribal officials.

Nor, to the extent practicable by law, may an agency promulgate a regulation that has Tribal implications and preempts Tribal law, unless the agency consults with Tribal officials. Although Tribes that meet the NFIP eligibility criteria can participate in the NFIP in the same manner as communities,<sup>17</sup> FEMA has reviewed this final rule under Executive Order 13175 and has determined that the rule does not have a substantial direct effect on one or more Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule modernizes notice requirements for community loss of eligibility information and community status information: therefore, the changes in this rule do not substantially or disproportionately affect Indian Tribal governments acting as communities under the NFIP.

5. Executive Order 13132, “Federalism”

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” For the purposes of this Executive Order, the term States also includes local governments or other subdivisions established by the States. Under this Executive Order, Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States. Further, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has

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<sup>17</sup> Although the NFIP does not explicitly reference Tribal Governments, FEMA includes Tribal nations in its definition of a community. See 44 CFR 59.1.

federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless the Federal Government provides funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation, or the agency consults with State and local officials. Nor, to the extent practicable by law, may an agency promulgate a regulation that has federalism implications and preempts State law, unless the agency consults with State and local officials.

FEMA has reviewed this rule under Executive Order 13132 and has determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order. This rule modernizes notice requirements for community status information under the NFIP; therefore, this rule does not impact the substantive rights, roles, or responsibilities of States, and does not limit State policymaking discretion.

6. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.) requires agencies to consider the impacts of their proposed actions on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 et seq., require Federal agencies to prepare Environmental Impact Statements (EIS) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that have been demonstrated to not typically trigger significant impacts to the human environment individually or



cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusions A3 included in the list of exclusion categories at Department of Homeland Security Manual 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a-f). This final rule meets Categorical Exclusion A3(d), “Those that interpret or amend an existing regulation without changing its environmental effect.”

#### 7. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801-808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has sent this final rule to the Congress and to GAO pursuant to the CRA. The rule is not a “major rule” within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

### **List of Subjects**

#### **44 CFR Parts 59**

Flood insurance, Reporting and recordkeeping requirements.

#### **44 CFR Part 64**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FEMA amends 44 CFR parts 59 and 64 as follows:

### **PART 59—GENERAL PROVISIONS**

1. The authority citation for part 59 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376
2. Amend § 59.24 by:
  - a. Revising the fourth sentence of paragraph (a);
  - b. Revising the fourth sentence of paragraph (c);
  - c. Revising the second sentence of paragraph (d);

d. Revising the second sentence of paragraph (e).

The revisions read as follows:

§ 59.24 Suspension of community eligibility.

(a) \* \* \* If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Federal Insurance Administrator shall provide written notice to the community and to the state and assure publication of the community's loss of eligibility for the sale of flood insurance on the internet or by another comparable method, such suspension to become effective upon the expiration of the six month period.

\* \* \*

\* \* \* \* \*

(c) \* \* \* If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. \* \* \*

(d) \* \* \* If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method.

\* \* \*

(e) \* \* \* Upon receipt of a certified copy of a final legislative action, the Federal Insurance Administrator shall withdraw the community from the Program and publish its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. \* \* \*

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## **PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE**

3. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 F R 19367, 3 CFR, 1979 Comp., p. 376.

4. Revise § 61.6 to read as follows:

### **§ 64.6 List of eligible communities.**

FEMA will maintain a list of communities eligible for the sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. 4001-4128). This list will be published and maintained on the internet or through another comparable method.

**Pete Gaynor,**

*Administrator,*

*Federal Emergency Management Agency.*